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June 16, 2004

EX PARTE COMMUNICATION

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W., TW-A325
Washington, DC 20554

Re: Role of Clearinghouses; Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96-128

Dear Ms. Dortch:

On behalf of the American Public Communications Council ("APCC"), this letter responds to the ex parte submission of the 1-800 American Free Trade Association ("AFTA") regarding the use of clearinghouses to implement compensation payments to payphone service providers ("PSPs"). See Letter to Marlene H. Dortch, Secretary, FCC, from Kathleen Greenan Ramsey, Swidler Berlin Shereff Friedman, LLP, filed May 12, 2004 ("AFTA Ex Parte").

- *AFTA's Position:* Switch-based resellers ("SBRs") and other Completing Carriers ("CCs") may use the services of clearinghouses to fulfill their payphone compensation obligations, without the consent of PSPs as long as the clearinghouse functions are audited in accordance with Section 64.1320.
 - *APCC's Response:* APCC agrees that SBRs and other CCs may use clearinghouses to disburse compensation payments on the CC's behalf, without PSPs' consent, *provided that* PSPs may also use clearinghouses or "aggregators" to receive compensation payments on the PSP's behalf, without CCs' consent. On various occasions, APCC Services, Inc., a clearinghouse that handles compensation payments for more than 1,000 PSPs, has encountered carrier resistance to dealing with APCC Services, even after the carrier was provided with evidence of APCC Services' authority to represent its PSP customers. Mutuality in the compensation process requires that carriers and PSPs mutually recognize each others' desires to process compensation payments through clearinghouse or aggregator entities.
- *AFTA's Position:* CCs who choose to delegate functions to clearinghouses remain ultimately responsible for compliance with the rules and liable for all payments required pursuant thereto.


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- *APCC's Response:* APCC agrees.
- *AFTA's Position:* When CCs use a clearinghouse, and do not submit payments directly to PSPs, the Commission should permit the CFO certification requirement (47 CFR §64.1310(a)(3)) to be satisfied by (a) publication on the clearinghouse's Internet site of the CFO statements from each of the CCs for which it processes PSP payments, and (b) submission of a statement by the clearinghouse with the payment to each PSP referring the PSP to the URL(s) on its Internet site where the statements from the CCs can be accessed.
 - *APCC's Response:* APCC agrees that this is a reasonable means of providing CFO certifications under Section 64.1310(a)(3).
- *AFTA's Position:* The Commission should clarify that with respect to clearinghouse functions, a CC's Section 64.1320(a)(3) CFO certification may be based upon "information and belief," as opposed to actual knowledge.
 - *APCC's Response:* APCC opposes the use of "information and belief" certification language. Certification upon "information and belief" implies a disclaimer by the CFO of responsibility for ascertaining the truth of the matters certified to – in this case, that the clearinghouse has directed payments in the correct amount to the correct PSP. Clearinghouses that make payments for carriers claim that they are acting as agents of their carrier clients. A CC is liable for the acts of its agents as well as for acts of its employees. Therefore, the CC's CFO should exercise the same supervisory care necessary to certify that both agents and employees of the CC have complied with the Commission's rules.
- *AFTA's Position:* When CCs use clearinghouses to process payments, the audit requirements of Section 64.1320 (47 CFR §64.1320) may be satisfied by separate audits of the functions performed by the CC and those performed by the clearinghouse. CCs should be permitted to rely upon clearinghouses to arrange for the audits of the functions the clearinghouses perform, provided the clearinghouses' audit reports are submitted to the Commission and PSPs in the same manner as the audit reports of the CCs.
 - *APCC's Response:* APCC does not oppose separate audits of clearinghouse functions, provided that the procedures comply with relevant American Institute of Certified Public Accountants ("AICPA") auditing standards and provided that the CC's auditor reviews the audit report and papers of the clearinghouse's auditor to the extent necessary to enable the CC's auditor to rely on the clearinghouse audit as part of its overall verification of the CC's compensation system's accuracy and compliance with the Commission's rules.

- *AFTA's Position:* The Commission should permit fulfillment of the requirement to file audit reports with each PSP through publication on the clearinghouse Internet site and notice to the PSPs in the manner outlined above for quarterly CFO statements.
 - *APCC's Response:* APCC does not object to this method of providing audit reports with PSPs, provided that the notice to the PSPs also explains how PSPs may access the auditor's working papers. *See Id.*, §64.1320(g). In addition, however, all audit reports must be filed directly with the FCC.

The remainder of AFTA's ex parte deals with questions regarding IC agreements to pay on behalf of SBRs. This issue is fully addressed in APCC's ex parte on alternative payment arrangements. *See Amplification of APCC's Views on AT&T's Petition for Reconsideration, Letter to Marlene H. Dortch, Secretary, FCC, from Albert H. Kramer and Robert F. Aldrich, filed May 21, 2004.*

Sincerely,

A handwritten signature in black ink, appearing to read "Robert F. Aldrich", with a stylized flourish at the end.

Albert H. Kramer
Robert F. Aldrich

Enclosure

cc: Jeffrey Carlisle
Bill Dever
Darryl Cooper
Denise Coca